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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/029,506

12/21/2001

Hanuman B. Jampani

ETH-1601 (J&J 3.0-071)

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02/08/2005

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EXAMINER

FUBARA, BLESSING M

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/029,506

Applicant(s)

JAMPANI ET AL.

Examiner

Blessing M. Fubara

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1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Examiner acknowledges receipt of request for extension of time, amendment and remarks filed 09/27/04.

#### ***Claim Rejections - 35 USC § 102***

1. Claims 1-11, 17-24, 27-33 and 39-45 rejected under 35 U.S.C. 102(b) as being anticipated by Rosenthal et al. (EP 0 562 864).

Applicants argue that the embedded structures within the sponge matrix of Rosenthal cannot surround the implants sponge matrix and that Rosenthal does not disclose the use of any means for predetermining a permeation gradient or the presence of an enclosing means or any substructure that has an outwardly directed surface.

2. Applicants' arguments filed 09/27/04 have been fully considered but they are not persuasive.

The present claims do not exclude a sponge. The substructure of polyglycolic acid film is the enclosing film. The outwardly directed surface of the claimed product allows the passage of pharmaceutically active agents through. The substructure in Rosenthal may be oriented within the matrix to provide conduits or pathways (column 5, lines 12-50) and these pathways or conduits while allowing cells to infiltrate also permits the release of active agents and the claims broadly read on Rosenthal. The substructure or matrix in Rosenthal provides controlled or phasic release of active agents into the wounds.

#### ***Claim Rejections - 35 USC § 103***

3. Claims 12-16 and 34-38 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenthal et al. (EP 0 562 864).

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4. Claims 25 and 26 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenthal et al. (EP 0 562 864) in view of Suzuki et al. (JP 405163424).

Applicants argue that because the present application is distinct over Rosenthal, the designated claims cannot also be obvious over Rosenthal alone or in combination with Suzuki.

5. Applicants' arguments filed 09/27/04 have been fully considered but they are not persuasive.

For reasons set forth above, claims 12-16, 34-38 and 25 and 26 are obvious over Rosenthal and Rosenthal in view of Suzuki.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 272-0594. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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